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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.G., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

D074225

(Super. Ct. No. JCM241016)

APPEAL from an order of the Superior Court of San Diego County, Browder A.

Willis, III, Judge. Affirmed as modified.

Britton Donaldson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Andrew Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

Following an adjudication hearing, the juvenile court found M.G. (the Minor) had committed misdemeanor battery (Pen. Code, § 242). The court made a true finding on the petition filed under section 602 of the Welfare and Institutions Code. The Minor was declared a ward of the court and placed on probation on various terms and conditions.

The Minor appeals, challenging only one of the conditions of probation. Specifically, he contends the condition which requires him to report all law enforcement contacts within three calendar days is unconstitutionally vague. We agree with his contention and will remand the case to the juvenile court to either modify the condition or to strike it.

### STATEMENT OF FACTS<sup>1</sup>

#### Prosecution case

In August 2017, the Minor got into an argument with his legal guardian. The police were called, and the Minor was upset.

The next day, the Minor and the guardian got into another argument. During that argument the Minor grabbed the guardian by the wrists and held them and pushed her. The Minor threatened to hit her. Police were again called to the home.

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<sup>1</sup> The Minor does not challenge the sufficiency or admissibility of the evidence to support the true finding. Accordingly, we will only provide a short summary of the evidence.

### Defense case

The Minor testified that on the day of the offense he and the guardian got into an argument regarding the TV remote control device. The Minor said the guardian tried to hit him with the remote, so he grabbed her wrists to protect himself.

## DISCUSSION

### Probation Condition

The Minor challenges the probation condition which requires him to "report all law enforcement contacts to the Probation Officer within three calendar days." The Minor did not object in the juvenile court, but contends the condition is unconstitutionally vague, thus his failure to object does not cause forfeiture of the issue on appeal. The People contend that even if the issue is not forfeited the condition is not impermissibly vague.

Ordinarily, a defendant must object to a probation condition in the trial court in order to preserve the challenge for appellate review. (*People v. Welch* (1993) 5 Cal.4th 228, 234.) Where a condition is unconstitutionally vague or overbroad an objection may be raised for the first time on appeal. In such instances the defect can be discerned from the language of the condition and does not require resort to the facts in the record. (*In re Sheena K.* (2007) 40 Cal.4th 875, 882 (*Sheena K.*).

In order for a probation condition which limits otherwise lawful activity to be valid, the probationer must be able to know what is expected or prohibited. In *Sheena K.*, the juvenile was ordered not to associate with persons who are disapproved by the probation officer. The court found the condition to be vague and overbroad. The

condition did not have a knowledge or scienter requirement; thus, the juvenile would not know who to avoid. (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

In *People v. Relkin* (2016) 6 Cal.App.5th 1188, 1196-1198 (*Relkin*), the court dealt with a condition which required the defendant to report, among other things, any contact with any peace officer. The defendant contended that such requirement was vague. The court agreed stating: ". . . the portion of the condition requiring that defendant report 'any contact with . . . any peace officer' is vague and overbroad and does indeed leave one to guess what sorts of events and interactions qualify as reportable." (*Id.* at p. 1197.)

The People urge us not to follow *Relkin*, *supra*, 6 Cal.App.5th 1188 because the condition would not require the Minor to report casual or insignificant contacts. The problem with that position, which was rejected in *Relkin*, is that the condition clearly requires reporting of all contacts with all law enforcement officers and does not provide any guidance that would allow selectivity among types of contacts.

We agree with the court in *Relkin*, *supra*, 6 Cal.App.5th 1188 that such condition must be modified to give the Minor notice as to which types of contacts with law enforcement he is required, under pain of probation revocation, to report. Accordingly, we will remand the matter to the juvenile court to either clarify the scope of the condition or to strike it.

#### DISPOSITION

The case is remanded with directions to modify or strike the condition of probation which requires the Minor to report law enforcement contacts consistent with

the views expressed in this opinion. In all other respects the adjudication and disposition orders are affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

GUERRERO, J.